IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8018 of 1996
With
SPECIAL CIVIL APPLICATION No. 1311 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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INSTITUTE OF HOTEL MANAGEMENT - Petitioner(s)

Versus

SAVABHAI GOBARBHAI PARMAR - Respondent(s)

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Appearance :
MR MUKUND M DESAI for Petitioner(s) : 1,
MR RC PATHAK for Respondent(s) : 1,
MR RAJESH P MANKAD for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 13/01/2006

CAV JUDGMENT

1.So far as Special Civil Application No. 8018 of 1996 is concerned, the same has been filed by the petitioner –

Institute of Hotel Management challenging the judgment and award passed by the Presiding Officer, Labour Court, Ahmedabad dated 21.06.1996 in Reference (LCA) No. 2321 of 1988, by which the petitioner – Institute of Hotel Management has been directed to reinstate the respondent – workman on his original post with continuity of service and also directed to pay 40% back wages for the intervening period.

2. So far as Special Civil Application No. 1311 of 1997 is concerned, the same is filed by Savabhai Gobarbhai – workman for enforcement of the award passed by the Presiding Officer, Labour Court, Ahmedabad dated 21.06.1996 in Reference (LCA) No. 2321 of 1988 and also the denial of remaining 60% back wages.

3. It appears from the record that Special Civil Application No.8018 of 1996 has been admitted as back as on 24.04.1997, but no interim relief has been granted. It also appears that so far as Special Civil Application No. 1311 of 1997 is concerned, the same is ordered to be heard with Special Civil Application No.8018 of 1996.

4. It can been seen from the record that the respondent – workman has raised industrial dispute being Reference No. 2321 of 1988 before the Labour Court, Ahmedabad. The Labour Court, Ahmedabad, after appreciating the

evidence on record, by its judgment and award dated 21.06.1996 directed the petitioner – Institute of Hotel Management to reinstate the respondent workman on his original post with continuity of service and also directed the petitioner – Institute of Hotel Management to pay 40% back wages to the respondent workman for the intervening period.

5. Being aggrieved and dissatisfied by the said judgment and award dated 21.06.1996, the petitioner - Institute of Hotel Management preferred Special Civil Application No. 8018 of 1996 for quashing and setting aside the same, whereas being aggrieved and dissatisfied by the denial of 60% back wages and for enforcement of the judgment and award dated 21.06.1996 directing the petitioner i.e., Institute of Hotel Management to reinstate the respondent workman in service, the respondent workman has preferred Special Civil Application No.1311 of 1997.

6. Heard Mr.Jayraj Chauhan for Mr.M.M.Desai, learned advocate appearing for Institute of Hotel Management and Mr.R.P.Mankand, learned advocate appearing for the respondent workman and perused the material placed on record.

7. It is the contention of the learned advocate appearing on behalf of the petitioner i.e., Institute of Hotel

Management that the Labour Court has not appreciated the contention of the institute that the reference in question cannot be entertained by the Labour Court. Relying upon the notification dated 17.12.1998 issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, it is submitted by the learned advocate appearing for the petitioner – Institute of Hotel Management that sub-section (3) of Section 14 of the Administrative Tribunals Act, 1985 will be applicable to all the Institutes of Hotel Management and the reference of the notification being G.S.R.No.730/E dated 2.5.86 was given in the above mentioned notification dated 17.12.1998. It is, therefore, submitted by the learned advocate appearing for the petitioner – Institute of Hotel Management that the reference made by the State Government is bad in law and consequently the judgment and award passed by the Presiding Officer, Labour Court, Ahmedabad is also bad in law and the same is required to be quashed and set aside. It is further submitted by the learned advocate appearing for the petitioner that since the full financial responsibility has been assumed by the Central Government, the State Government cannot refer the matter to the Labour Court for adjudication. It is, therefore, submitted that appropriate Government in

this case shall be the Central Government and it can only make a reference and, therefore, the reference made by the Central Government can only be regarded as competent reference. It is also submitted by the learned advocate appearing for the petitioner that the petitioner - Institute of Hotel Management is not an industry and the reference ought not to have been heard and maintained. It is further submitted that the workman himself, after having failed in the selection post, filed the reference and, therefore, the reference could not have been maintained, as, it is not an action of termination.

8. On the other hand, it is submitted by Mr.R.P.Mankad, learned advocate appearing for the respondent workman that the learned Presiding Officer of the Labour Court, Ahmedabad has considered all the aspects of the matter and after appreciating the evidence on record, the Labour Court has framed the issue at page 26 and has given its elaborate finding of fact at pages 27 to 32. He submitted that since the respondent workman has not been gainfully employed in any establishment, 100% back wages ought to have been granted by the Labour Court. He submitted that since there was no stay against the implementation and operation of the judgment and award under challenge, the petitioner Institute of Hotel

Management ought to have implemented the said award and reinstated the respondent workman in service. He submitted that the issue with regard to the industry was never raised before the learned Labour Court and it has been raised for the first time before this Court at the stage of final hearing and as per the settled law, new plea cannot be permitted, and therefore the said contention is required to be eliminated on this ground alone. He submitted that the contention with regard to the appropriate government has already been dealt with properly by the Labour Court and the Labour Court has rightly come to the conclusion that appropriate government in the present case was the State Government. He submitted that the document produced by the petitioner before this Court at the stage of final hearing after 8 years cannot be taken into consideration, because, the same was not produced before the Labour Court and the concerned workman had no opportunity to counter the same. He further submitted that assuming that the document produced at this belated stage can be considered by this Court, in that case also, in case of the petitioner, the Central Government cannot be appropriate Government in view of the judgment in case of Steel Authority of India Ltd., and others Vs. National Union Water Front Workers and

others, reported in (2001) 7 SCC 1. He submitted that as per the definition of appropriate Government in the Industrial Disputes Act, the Central Government can be appropriate government only if it is so declared under the Industrial Disputes Act or by subsequent notification. It is, therefore, requested to dismiss the Special Civil Application No.8018 of 1996 and to allow Special Civil Application No.1311 of 1997.

9. It can be seen from the record that the Labour Court has recorded the finding of fact at pages 27 to 32 with regard to the issues i.e., the State Government being appropriate government, jurisdiction of the Labour Court in granting relief, completion of 240 days working and non-observance of prescribed procedure for terminating the service. It is undisputed that even after 10 years of passing of the award and though there is no stay against the implementation of the judgment and award passed by the Labour Court, Ahmedabad dated 23.6.1996, the petitioner – Institute of Hotel Management has not implemented the judgment and award. So far as the contention of the learned advocate appearing for the petitioner – Institute of Hotel Management that the petitioner institute is not an industry is concerned, considering the facts on record, it appears that the said issue was never raised before

the Labour Court and the same has been raised before this Court while arguing the matter for final hearing and as per the settled law, new plea cannot be permitted at this stage. So far as the contention with regard to the appropriate government is concerned, considering the judgment in case of Steel Authority Pvt. Ltd., (supra), as well as considering the documents produced by the petitioner – Institute of Hotel Management, I am of the considered opinion that the appropriate government in the present case is the State Government and the Labour Court has very rightly come to the conclusion that the appropriate government in the present case was the State Government. It is required to be noted that as per the definition of appropriate government as discernible under the Industrial Disputes Act, Central Government can be appropriate government only if it is so declared under the Industrial Disputes Act or by subsequent notification. It is an admitted and undisputed fact that no such declaration exists and the same has not been produced by the petitioner Institute of Hotel Management even at the belated stage of final hearing before this Court. It can also be seen that it is not the case of the petitioner that the petitioner is declared or notified industry in the manner prescribed

under the Industrial Disputes Act. I am, therefore, of the opinion that the finding of fact reached by the Labour Court cannot be said to be perverse or erroneous in any view of the matter. So far as the issue with regard to participation of the respondent workman in the selection test, in the facts of the present case, it does not mean that he had given away his right to challenge the termination.

10. In view of the aforesaid discussion, Special Civil Application No.8018 of 1996 is required to be dismissed and Special Civil Application No.1311 of 1997 is required to be partly allowed. Rule is discharged so far as Special Civil Application No.8018 of 1996 is concerned. The petitioner Institute of Hotel Management, Ahmedabad is directed to reinstate the respondent workman forthwith and also directed to pay 40% back wages within a period of two months from the date of receipt of this order. So far as Special Civil Application No.1311 of 1997 is concerned, Rule is made absolute partly. No costs.

(SHARAD D DAVE, J)

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